

Department of Justice

§ 36.503

entire seating section is placed on temporary platforms or other movable structures in an area where fixed seating is not provided, in order to increase seating for an event, wheelchair spaces and companion seats may be placed in that section. When wheelchair spaces and companion seats are not required to accommodate persons eligible for those spaces and seats, individual, removable seats may be placed in those spaces and seats;

(4) In stadium-style movie theaters, wheelchair spaces and companion seats are located on a riser or cross-aisle in the stadium section that satisfies at least one of the following criteria—

(i) It is located within the rear 60% of the seats provided in an auditorium; or

(ii) It is located within the area of an auditorium in which the vertical viewing angles (as measured to the top of the screen) are from the 40th to the 100th percentile of vertical viewing angles for all seats as ranked from the seats in the first row (1st percentile) to seats in the back row (100th percentile).

(g) *Medical care facilities.* Medical care facilities that are subject to this part shall comply with the provisions of the 2010 Standards applicable to medical care facilities, including, but not limited to, sections 223 and 805. In addition, medical care facilities that do not specialize in the treatment of conditions that affect mobility shall disperse the accessible patient bedrooms required by section 223.2.1 of the 2010 Standards in a manner that is proportionate by type of medical specialty.

[AG Order No. 3181–2010, 75 FR 56256, Sept. 15, 2010]

§§ 36.407–36.499 [Reserved]

Subpart E—Enforcement

§ 36.501 Private suits.

(a) *General.* Any person who is being subjected to discrimination on the basis of disability in violation of the Act or this part or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303 of the Act or subpart D of this part may institute a civil action for preventive relief, including an application for a perma-

nent or temporary injunction, restraining order, or other order. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in the civil action if the Attorney General or his or her designee certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security. Nothing in this section shall require a person with a disability to engage in a futile gesture if the person has actual notice that a person or organization covered by title III of the Act or this part does not intend to comply with its provisions.

(b) *Injunctive relief.* In the case of violations of § 36.304, §§ 36.308, 36.310(b), 36.401, 36.402, 36.403, and 36.405 of this part, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by the Act or this part. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by the Act or this part.

§ 36.502 Investigations and compliance reviews.

(a) The Attorney General shall investigate alleged violations of the Act or this part.

(b) Any individual who believes that he or she or a specific class of persons has been subjected to discrimination prohibited by the Act or this part may request the Department to institute an investigation.

(c) Where the Attorney General has reason to believe that there may be a violation of this part, he or she may initiate a compliance review.

§ 36.503 Suit by the Attorney General.

Following a compliance review or investigation under § 36.502, or at any other time in his or her discretion, the Attorney General may commence a civil action in any appropriate United States district court if the Attorney

§ 36.504

28 CFR Ch. I (7–1–16 Edition)

General has reasonable cause to believe that—

(a) Any person or group of persons is engaged in a pattern or practice of discrimination in violation of the Act or this part; or

(b) Any person or group of persons has been discriminated against in violation of the Act or this part and the discrimination raises an issue of general public importance.

§ 36.504 Relief.

(a) *Authority of court.* In a civil action under § 36.503, the court—

(1) May grant any equitable relief that such court considers to be appropriate, including, to the extent required by the Act or this part—

(i) Granting temporary, preliminary, or permanent relief;

(ii) Providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) Making facilities readily accessible to and usable by individuals with disabilities;

(2) May award other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(3) May, to vindicate the public interest, assess a civil penalty against the entity in an amount

(i) Not exceeding \$50,000 for a first violation occurring before September 29, 1999, and not exceeding \$55,000 for a first violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding \$75,000 for a first violation occurring on or after April 28, 2014.

(ii) Not exceeding \$100,000 for any subsequent violation occurring before September 29, 1999, and not exceeding \$110,000 for any subsequent violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding \$150,000 for any subsequent violation occurring on or after April 28, 2014.

(b) *Single violation.* For purposes of paragraph (a) (3) of this section, in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered

entity has engaged in more than one discriminatory act shall be counted as a single violation.

(c) *Punitive damages.* For purposes of paragraph (a)(2) of this section, the terms “monetary damages” and “such other relief” do not include punitive damages.

(d) *Judicial consideration.* In a civil action under § 36.503, the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this part by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

[Order No. 1513–91, 56 FR 35592, July 26, 1991, as amended by Order No. 2249–99, 64 FR 47103, Aug. 30, 1999; AG Order No. 3324–2014, 79 FR 17436, Mar. 28, 2014]

EFFECTIVE DATE NOTE: By AG Order 3690–2016, 81 FR 42499, June 30, 2016, § 36.504 was amended by revising paragraphs (a)(3)(i) and (a)(3)(ii), effective Aug. 1, 2016. For the convenience of the user, the revised text is set forth as follows:

§ 36.504 Relief.

(a) * * *

(3) * * *

(i) Not exceeding \$50,000 for a first violation occurring before September 29, 1999, and not exceeding \$55,000 for a first violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding \$75,000 for a first violation occurring on or after April 28, 2014, except that, for civil penalties assessed after August 1, 2016, for a first violation occurring after November 2, 2015, the civil penalty shall not exceed the applicable amount set forth in 28 CFR 85.5.

(ii) Not exceeding \$100,000 for any subsequent violation occurring before September 29, 1999, and not exceeding \$110,000 for any subsequent violation occurring on or after September 29, 1999, and before April 28, 2014, and not exceeding \$150,000 for any subsequent violation occurring on or after April 28, 2014, except that, for civil penalties assessed after August 1, 2016, for any subsequent violation occurring after November 2, 2015, the civil penalty shall not exceed the applicable amount set forth in 28 CFR 85.5.

* * * * *